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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,500	10/24/2003	Peter W. Carhuff	88265-7670	1144

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WINSTON & STRAWN LLP  
PATENT DEPARTMENT  
1700 K STREET, N.W.  
WASHINGTON, DC 20006

EXAMINER
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MARKOFF, ALEXANDER

ART UNIT	PAPER NUMBER
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1746

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07/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/692,500	Applicant(s) CARHUFF ET AL.	
	Examiner Alexander Markoff	Art Unit 1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2007.  
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 23,29-39,42,43,46-48,50-62 and 64 is/are pending in the application.  
 4a) Of the above claim(s) 33 and 38 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 23,29-32, 34-37, 39,42,43,46-48,50-62 and 64 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 60 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The applicants amended the claims to recite the temperature above 70 degrees.

Such concept is disclosed by the original disclosure.

3. Claims 23, 29-32, 34-37, 39, 42, 43, 46-48, 50-57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The applicants amended the claims to recite that the sanitizing operation occurs non-concurrently with the cleansing operation and rinsing for sanitizing operations.

Such concept is not supported by the original disclosure. The original disclosure teaches the sanitizing as a part of the cleansing operation (paragraph [0016] of the specification).

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 23, 29-32, 34-37, 39, 42, 43, 46-48, 50-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicants amended the claims to recite that the sanitizing operation occurs non-concurrently with the cleansing operation and rinsing for sanitizing operations.

The amendment makes the claims indefinite because it is not clear what is required by the newly introduced limitation. It is noted that the original disclosure teaches the sanitizing as a part of the cleansing operation.

The claims further indefinite because it is not clear how can the sanitizing be conducted not concurrent with rinsing for sanitizing.

It appears that the applicants use non-consistent and confusing terminology.

### ***Claim Rejections - 35 USC § 102 & 103***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 23, 29-32, 34-36, 39, 42, 43, 46-48, 50-56, 62 and 64 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as

obvious over Mirabile (US Patent No 5,762,096, which incorporates US Patent No 4,527,585).

Mirabile teaches a method comprising the claimed manipulative steps. See entire document and incorporated patent, especially column 1 and column 4, line 20 – column 7, line 41.

Mirabile does not specifically states that cleaning is conducted several times per day. However, since Mirabile teaches conducting cleaning in off-hours and any desired or needed time it is believed that that the cleaning is conducted more than ones per day in the conventional operations.

On the other hand, it would have been obvious to an ordinary artisan at the time the invention was made to conduct the cleaning at any time when required by operation conditions recited by Mirabile, such as for example unacceptable foaming due to freezing or contamination.

11. Claims 37, 57, 58, 59, 60 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mirabile.

Mirabile teaches the claimed method except for specific recitation of velocity of cleaning fluid, temperature of water, duration of cleaning and cleaning of the milk-based food or component.

As to the temperature of water: the cited documents teach the use of hot water. The scope of the term “hot water” comprises the water of the claimed temperature. It would have been obvious to an ordinary artisan at the time the invention was made to

find an optimum temperature of the hot water by routine experimentation in order to ensure the cleaning and sanitizing of the dispensers.

As to the fluid velocity and duration of cleaning:

These parameters are result effective variables. It would have been obvious to find optimum values of the result effective variables by routine experimentation in order to enhance cleaning and ensure desired level of cleaning.

As to the specific food or food component: Mirabile teaches cleaning and sanitizing of the beverage dispensers. Mirabile does not exclude any food or any dispensers.

It would have been obvious to an ordinary artisan at the time the invention was made to apply the method of Mirabile for cleaning and sanitizing any food beverage dispenser in order to keep it clean and sanitized.

### ***Response to Arguments***

12. Applicant's arguments filed 05/01/07 have been fully considered but they are not persuasive.

The applicants allege that the limitation of above 70 degrees in claim 60 is supported by recitation of the range 70-95.

The examiner disagrees. The range 70-95 does not support the limitation of above 70 degrees, because it does not support the temperatures above 95 degrees.

The applicants amended the claims and allege that the amended claims are supported by the original disclosure.

This is not persuasive for the reasons provided in the rejection above.

It is noted that in contrast to the applicants' allegation the original disclosure teaches the sanitizing as a part of the cleansing operation (paragraph [0016] of the specification).

Further, the amendment makes the claims indefinite because it is not clear what is required by the newly introduced limitation. It is again noted that the original disclosure teaches the sanitizing as a part of the cleansing operation. Further, it is not clear how can the sanitizing be conducted not concurrent with rinsing for sanitizing.

With respect to the rejections made over Mirabile the applicants argue that in the claimed invention a single heated water stream replaces cleaning and rinsing streams of Mirabile.

This is not persuasive and contradicts to the claims.

First, the claims are not limited to the hot water alone. The claims recite cleaning, rinsing and hot water.

Second, the claims are written using the language "comprising", which does not exclude any other agents or streams.

Third, the method of Mirabile uses the same agent – hot water. The effect of the application of the same agent would be inherently the same.

It is also noted that the specification does not teach any criticality of the temperature of the hot water or any degree of the reduction of the deposits. In contrast the specification states that the use of water with lower temperature would require longer time.



***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1746

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alexander Markoff  
Primary Examiner  
Art Unit 1746

AM

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